

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOY RACER, INC.,

Case No. C-11-02536 JCS

Plaintiff,

v.

**ORDER SEVERING AND DISMISSING
DOE DEFENDANTS 2-98**

DOES 1-98,

Defendants.

In its previous Order, the Court denied Plaintiff's *Ex Parte* Application for Leave to Take Expedited Discovery and issued an Order to Show Cause ("the Order to Show Cause") why the Court should not sever all but Doe 1 from this action and dismiss without prejudice the claims against Doe Defendants 2-98. Plaintiff filed a response on September 30, 2011 ("Response"). Having considered the arguments raised by Plaintiff in its Response, the Court finds that joinder of the Doe Defendants is improper under Rule 20(a) and unmanageable under Rule 20(b) of the Federal Rules of Civil Procedure and therefore severs and dismisses without prejudice all claims asserted by Plaintiff against Does 2-98. The **Show Cause Hearing** scheduled for **October 21, 2011 at 1:30 p.m.** is **vacated**. The **Case Management Conference** scheduled for the same time shall **remain on calendar**.

First, the majority of the arguments raised in Plaintiff's Response were addressed in the Court's order in Case No. C-11-01566, Docket No. 26 ("the August 23 Order"). As the Court explained in the Order to Show Cause, in that order it "concluded that Doe Defendants who are joined in a single action on the basis that all of them used the BitTorrent protocol to illegally download a protected work are improperly joined, even if all of the Doe Defendants participated in a single 'swarm.'" To the extent that some judges in this district have reasoned that joinder may be proper where the plaintiff alleges that all of the Doe Defendants participated in the same "swarm," the undersigned disagrees for the reasons stated in the Court's August 23 Order.

1 Second, the Court rejects Plaintiff's argument that joinder should be permitted, at least at this
2 early stage of the case, because a determination as to whether joinder is proper should not be made
3 until *after* the Doe Defendants have been identified, which requires discovery. This argument was
4 not raised in Case No. 11-01566 and therefore was not addressed in the Court's August 23 Order.
5 As a preliminary matter, Plaintiff has not cited any authority in support of its contention that a court
6 should not address whether joinder is proper until the Doe Defendants have been identified.

7 More importantly, even if there are multiple IP addresses associated with a single individual,
8 as Plaintiff suggests may be the case, Plaintiff's allegations are not sufficient to show that the
9 remaining defendants – of whom there are still likely to be many – participated in a single
10 transaction that meets the requirements of Rule 20(a). Nor does the potential reduction in the
11 number of defendants alleviate the Court's concerns under Rule 20(b) relating to the logistical
12 difficulties of conducting proceedings involving multiple defendants with diverse defenses. Plaintiff
13 apparently had a good faith basis for naming 98 Does as defendants in this action, whether or not
14 multiple IP addresses may belong to a single individual. Having named 98 Does as defendants, the
15 possibility that the number might be reduced somewhat after discovery does not persuade the Court
16 that joinder is proper under Rule 20(a) or advisable under Rule 20(b).

17 Finally, though Plaintiff represents that the Court can address joinder at a later stage of the
18 case, when more information about the Doe Defendants has been obtained, Plaintiff is unlikely to
19 reach that point because, as experience shows, the discovery that is required to identify the Doe
20 Defendants goes far beyond the expedited discovery to obtain subscriber information that has
21 already been requested. As Plaintiff's counsel conceded in a similar case in this district, in order to
22 "fully identify" the Doe Defendants, Plaintiff would be required to inspect each subscriber's
23 "electronically stored information and tangible things, such as [the s]ubscriber's computer and the
24 computers of those sharing his Internet network, for the purpose of finding the individual that
25 unlawfully violated Plaintiff's copyrighted works by uploading/downloading the file referenced
26 BitTorrent." *See Boy Racer, Inc. v. Does 1-52*, Northern District of California, Case No. 11-2329,
27 Docket No. 17 (Order Denying Further Discovery) at 4. In that case, Judge Grewal denied the
28 plaintiff's request for further discovery. Similarly, it is highly unlikely that the undersigned would

1 permit such extensive and invasive discovery of non-parties to determine the identity of the Doe
2 Defendants.

3 Accordingly, the Court severs and dismisses without prejudice all claims asserted by
4 Plaintiff against Does 2-98.

5 IT IS SO ORDERED.

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7 Dated: October 14, 2011

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11 JOSEPH C. SPERO
12 United States Magistrate Judge
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